

LUCILLE M. FREDERICK

IBLA 72-80

Decided May 16, 1972

Appeal from the decision of the Alaska state office rejecting appellant's application to purchase headquarters site A-062230.

Case remanded for hearing.

Rules of Practice: Hearings -- Alaska: Headquarters Sites: Generally

In an appeal from the rejection of an application to purchase a headquarters site an appellant's request for a hearing may be granted where disputed facts are alleged which, if proved, would warrant the granting of the relief sought.

APPEARANCES: Lucille M. Frederick, pro se.

OPINION BY MR. STUEBING

Lucille M. Frederick has appealed to the Board of Land Appeals from a decision by the state office, Bureau of Land Management, Anchorage, Alaska, issued September 9, 1971, rejecting her application to purchase a headquarters site pursuant to the Act of March 3, 1927, 44 Stat. 1363, as amended, 43 U.S.C. 687a (1972). The decision of the state office also denied appellant's request for reinstatement. A request for hearing was included in this appeal.

The site, comprising approximately 5 acres at the east end of Cooper Lake, is situated in sec. 1, T. 7 N., R. 10 E., CRM. Appellant and her husband first occupied the site on May 29, 1960. Her husband filed a notice of location, but was unable to purchase the site within the 5-year limit prescribed by 43 CFR 2563.1-1(c) 1/ issued pursuant to the Act, supra, and relinquished his claim in March 1965. Mrs. Frederick filed a notice of location on March 9, 1965. At the time of the filing the notice of location the land had not been surveyed.

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1/ Application to purchase a claim, along with the required proof or showing, must be filed within 5 years after the filing of notice of the claim.

The crux of this appeal to the Board is whether or not appellant filed her application to purchase the site within the time limit prescribed by 43 CFR 2563.1-1(c).

Appellant contends that she filed her petition for survey and her application to purchase on a visit to the state office in October 1969, within the 5-year time limit prescribed by 43 CFR 2563.1-1(c). She alleges that she completed the necessary forms upon being advised to do so by an employee of the Bureau of Land Management. Appellant states that she has at least a dozen persons willing to testify that she visited the Anchorage office in October 1969 and filed the forms in question.

Appellant admits that she did not pay the \$10 filing fee but states that the clerk in the land office did not indicate it was necessary.

In the state office decision rejecting her application, the chief adjudicator stated that the office has no record of appellant's filing of the document or payment of the filing fee required by 43 CFR 2563.1-1(b). He added:

Unless the applicant submits proof to support her contention that she filed a timely application to purchase, it must be presumed that it was never received in the land office.

A factual dispute exists as to whether appellant filed her application to purchase and petition to survey within the time limit. Since appellant's case hinges on this threshold issue, it is necessary to resolve the factual question before considering the merits of the case. Where facts are alleged which, if proved, would warrant the granting of the relief sought, appellant's request for a hearing will be granted. cf. Leo J. Kottas, Earl Lutzenhiser, 73 I.D. 123 (1966). The Board may, on its own motion, refer a case to an examiner for a hearing on an issue of fact. 43 CFR 4.452-9.

Accordingly, the case will be referred to a hearing examiner to adduce evidence as to whether the purchase application was filed as alleged, and, if so, whether non-payment of the filing fee at the time of filing is satisfactorily explained as being the result of ignorance or mistake within the ambit of 43 CFR 1871.1-1. The examiner will submit the record and proposed findings of fact to the Board. 43 CFR 4.439 (1972).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R.

12081), the case is remanded for referral to a hearing examiner for a hearing on the issues presented.

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Edward W. Stuebing, Member

We concur:

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Anne Poindexter Lewis, Member

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Martin Ritvo, Member

